

## REMARKS

### **A. Status of the Case**

In the Specification, the list of inventors beginning on page 1, line 8, has been amended to delete the names "Robert Lawrence Prosis" and "Christopher Randall Beharry". With the cancellation of Claims 1-7, 11, 12, 14-22, 25-36, and 38-64, claims wherein these individuals are inventors are cancelled. A Petition To Correct Inventorship is herein enclosed.

Claims 8, 9, 10, 13, 23, 24 and 37 are now in the case. Claim 8 has been amended. The amendment reflects the required minimum levels of non-fat nut solids as achieved via mixture of two oil suspensions in forming the nut spread. (Specification p.6, lines 32-34, p.10 lines 26-28, and p.12 lines 32-34) Claims 1-7, 11, 12, 14-22, 25-36, and 38-64 have been cancelled. Claims 9, 10, 13, 23, 24, and 37 remain in this application as originally filed.

No new matter is added and entry of the amendments is requested.

### **B. Summary of Invention**

Before considering the Examiner's rejection of the claims, the essence of the present invention will be briefly summarized. Nut spreads with high protein, high fiber and/or reduced fat are typically prepared by increasing the level of solid ingredients present in the final product while reducing the level of oil to decrease calories. (Specification, p.2, lines 5-7) Unfortunately, increasing the level of solids in the nut spread relative to the level of oil can have deleterious effects on the quality of the nut spread. (Specification, p.2, lines 12-17; 21-27) Particularly, a loss of spreadability and high in-line process viscosity occur when the nut solids level exceeds 29%. (Specification, p. 3, lines 11-13)

Indeed, the cited primary reference (Meade, below) recognizes the problems associated with using low-fat peanuts to make nut spreads. Meade limits the use of such material to 34% (Meade, Column 4, line 41) and further implies that even levels above about 30% are hardly acceptable. (Meade, Column 8, lines 10-15) The present invention provides a low fat nut spread comprising at least about 35% by weight on a non-fat basis of defatted nut solids that is also high in protein and fiber, yet has the flavor and texture of a full fat nut butter or spread. (Specification, p.3, lines 26-27, and p. 10, lines 26-28) The aforementioned organoleptic and processing problems are substantially alleviated by combining the nut spread ingredients via the formation and mixing of two separate oil suspensions, a protein-containing oil suspension and a sugar-containing oil suspension. (Specification, p.4, lines 21-23) The blending of two separate oil suspensions reduces mixing complexity and intensity, thereby aiding in the adsorption and

effectiveness of materials that lower viscosity and minimize nut spread flavor loss. (Specification, p.4, lines 21-23, and p.13, lines 2-3)

**C. Rejection under 35 U.S.C. 103(a)**

The Examiner rejects Claims 1-64 under 35 U.S.C. 103(a) as being unpatentable over Meade (6,010,737) in view of "Composition of Foods," page 112. Applicants respectfully traverse the rejections on this basis to the extent they may apply to the remaining claims as amended herewith. Arguments previously made in support of patentability continue to apply, but will not be repeated herein, for sake of brevity.

**D. The Examiner misapprehends the teachings of the art**

The Examiner, on page 3 of the Office Action dated 12/17/2002, states "...Meade discloses the use of about 47% nut solids in using defatted nuts, roasted peanuts and nut flour." It is clear from this statement that the Examiner has arrived at the 47% nut solids by simply adding the compositional percentages of Meade's Example 1. Said another way, the 47% figure includes both full fat and non-fat nut solids. However, the use of full-fat peanuts is not the issue. As discussed above, the use of full-fat nuts poses no problems. It is only when low/no-fat nuts are used that the problems arise. Meade recognizes that, and limits the non-fat nuts (e.g. nut flour) to 34% in her compositions. (Meade, Column 4, line 41)

**E. The cited references fail to teach all the limitations of the Applicants' invention; Meade teaches away from Applicants' invention and further teaches a nut spread where all of the ingredients are simultaneously mixed**

According to MPEP 2441.02, a cited reference must be considered in its entirety, including disclosures that would teach away from the claimed invention. Also according to MPEP 2143.03, when making a rejection under §103 all claim limitations must be taught or suggested by the references. Applicants' claims require a nut spread comprising at least about 35% by weight on a non-fat basis of nut solids and comprising a mixture of two oil suspensions. Meade does not teach these claim limitations; in fact, the reference teaches away from the present invention.

**The cited reference teaches away from the current invention.**

The Examiner's attention is again directed to the fact that the Meade reference teaches away from using at least about 35% by weight on a non-fat basis of nut solids. In Column 4, lines 40-46, Meade teaches that non-fat peanut solids can range from about 20-34%. The preferred range of non-fat nut solids in Meade is about 25% to 29% to maximize peanut flavor, spreadability, texture, and viscosity. Other parts of the Meade specification support this point. In Examples 1-4 respectively, the amount of non-fat peanut solids used is 28.41%, 28.38%, 25.54%, and 23.84%. In Example 5, 30.93% non-fat peanut solids are used, however, it is explained that this level of non-fat peanut solids was in the high end of the acceptable range. (Meade, Column 8, lines 10-15) On the contrary, the nut spread of the current application, uses at least about 35% of non-fat nut solids. The Examples also agree on this point. (Specification, p.17, lines 21-22)

The nut solid content is essential to both Meade and the claimed invention because what is desired is a nut spread that maximizes the nut solid content. In a low-fat spread as nut solid content increases and oil decreases, the quality of the nut spread decreases. (Specification, p.2, lines 12-13 and Meade, Example 5) Viscosity, spreadability, flavor, and texture of the nut spread become difficult to control. (Specification, p.2, lines 13-27) This task becomes increasingly more difficult as one reduces the fat content in nut spreads. In reduced fat or reduced calorie nut spreads, the level of nut solids is typically substantially lower than in full fat nut spreads and as a result these reduced fat nut spreads have less flavor. (Specification, p.3, lines 6-9) Meade, column 4, lines 40-41, teaches a nut spread having a maximum level of non-fat peanut solids of 34%. The nut spread as disclosed by the Applicants, however, maintains the flavor and texture of full fat nut spreads, while having a minimum level of nut solids of 35%.

**Meade teaches a nut spread where all of the ingredients are simultaneously mixed.**

Although highly significant, the difference between Meade and the current invention is far more than the relative ratios of the ingredients used in producing a nut spread. In Meade, Column 4, lines 60-65, and through Column 5, lines 1-5, all of the ingredients are fed simultaneously into one mixture to make a nut spread. This simultaneous mixing process is also repeated in each and every Example presented in Meade. In the current invention, two oil suspensions, a protein-containing oil suspension and sugar-containing oil suspension, are prepared and then combined by blending the two together. (Specification p.9, lines 30-35) If the ingredients were initially combined into one mixture as in Meade, rather than combined through the blending of two separate suspensions, a significant amount of energy would be required to disperse the solids. (Specification, p.12, lines 32-34)

The reference does not teach or suggest that the ingredients be combined in the presently disclosed ratios to form two separate oil suspensions which are then mixed to make the final nut spread. In fact, one of ordinary skill in the art using the method of Meade would not have been motivated to combine two oil suspensions to meet the claimed invention with any reasonable expectation of success. Additionally, the reference does not provide any degree of predictability that by creating two oil suspensions that are then combined, that one of ordinary skill in the art would arrive at the current invention. Furthermore, the Examiner has not shown where Meade teaches, suggests, or motivates one of ordinary skill in the art to modify the teachings to produce a nut spread comprised of two oil suspensions. Therefore, because the dual oil suspension is critical to forming the nut spread of the claimed invention, the general conditions of *any* of the claims are not disclosed in the reference.

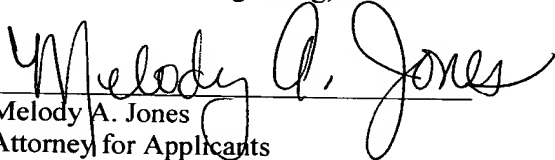
#### **Nutritive Value of Foods ("NVF") Reference**

The "Composition of Foods" reference (in fact, the document provided by the Examiner is entitled "Nutritive Value of American Foods") adds nothing to the Meade reference, discussed above. As far as can be seen, the NVF reference is merely a compilation of fat, protein, etc., values of nut spreads. However, NVF, by itself or in combination with Meade, does not teach or suggest the dual suspension aspect of the present invention

In light of the foregoing, reconsideration and allowance of Claims 8, 9, 10, 13, 23, 24, and 37 are requested.

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